

STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE
FEBRUARY 1, 2006

ITEM 7

SUBJECT

ADOPTION OF THE WAIVER OF LITIGATION RIGHTS LANGUAGE FOR THE 2005-06 CONSOLIDATED GRANTS PROGRAM GUIDELINES

DISCUSSION

The State Water Resources Control Board (State Water Board) adopted the 2005-06 Consolidated Grants Program Guidelines, with the exception of Section VI F. “Waiver of Litigation Rights,” at its January 4, 2006, meeting, reserving further discussion of litigation waivers to the February 1, 2006, meeting.

The State Water Board received negative comments on the waiver of litigation rights language that appeared in the draft and final draft versions of the 2005-06 Consolidated Grants Program Guidelines.

Based on the comments, the State Water Board directed staff to further explore possible alternatives to the waiver of litigation language and bring the suggested language to the February 1, 2006, meeting for consideration. Consideration of this matter by the State Water Board must occur prior to the awarding of any grants pursuant to the 2005-06 Consolidated Grants Program Guidelines. Timely resolution of this matter is necessary so that applicants can determine whether to participate in the 2005-06 Consolidated Grants Program process. Concept proposals, which are the first application for the grant funds, are due on February 9, 2006.

Staff reviewed the public comments and suggestions for revised waiver of litigation language. Staff presents the following options for language to be incorporated into Section VI. F. of the 2005-06 Consolidated Grants Program Guidelines, adopted by the State Water Board in Resolution No. 2006–004.

Option 1:

F. WAIVER OF LITIGATION RIGHTS

“Grant agreements funded by the State Water Board will specify the following:

‘As a material condition of this Agreement, the Grantee agrees that acceptance of any disbursements under this Grant Agreement shall effect a waiver of any right of action (including pending actions) against the State Water Resources Control Board (State Water Board) or any Regional Water Quality Control Board (Regional Water Board) to challenge any regulation or order of the State Water Board or the Regional Water Board in effect or pending as of the date this Agreement is signed by the State Water Board, which either requires performance of the Project, or though not required, whose terms or conditions would be satisfied in whole or in part by performance of the Project. This waiver shall not apply to internal administrative review by the State Water Board of its own or a Regional Water Board’s regulation or order, but it shall apply to judicial review thereof. This paragraph shall not apply to litigation arising due to disputes related to the performance of this Agreement. In the context of this section, a “pending” regulation or order means any draft regulation or order that has either been publicly circulated or for which a public meeting or hearing has been convened by the State Water Board or a Regional Water Board.’ ”

Option 2:

F. WAIVER OF LITIGATION RIGHTS

“Grant agreements funded by the State Water Board will specify the following:

‘As a material condition of this Agreement, the Grantee agrees that acceptance of any disbursements under this Grant Agreement shall effect a waiver of any right of action (including pending actions) against the State Water Resources Control Board (State Water Board) or any Regional Water Quality Control Board (Regional Water Board) to challenge any regulation or order of the State Water Board or the Regional Water Board in effect on the date this Agreement is signed by the State Water Board if either (1) the Project is required by the regulation or order or (2) the Project’s primary purpose, as stated in the grant issuance, is to achieve compliance with the water quality requirements of the regulation or order. This waiver shall not apply to internal administrative review by the State Water Board of its own or a Regional Water Board’s regulation or order, but it shall apply to judicial review thereof. This paragraph shall not apply to litigation arising due to disputes related to the performance of this Agreement.’”

POLICY ISSUE

Should the State Water Board adopt the litigation waiver language as presented, in either Option 1 or 2 above, for inclusion in Section VI. F. of the 2005-06 Consolidated Grants Program Guidelines?

FISCAL IMPACT

Not applicable.

REGIONAL WATER QUALITY CONTROL BOARDS IMPACT

Yes, all Regional Water Boards.

STAFF RECOMMENDATION

Staff have no recommendation.

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2006 -

ADOPTION OF THE WAIVER OF LITIGATION RIGHTS LANGUAGE FOR THE
2005-06 CONSOLIDATED GRANTS PROGRAM GUIDELINES

WHEREAS:

1. The State Water Resources Control Board (State Water Board), adopted the 2005-06 Consolidated Grants Program Guidelines, with the exception of Section VI. F. "WAIVER OF LITIGATION RIGHTS," at its January 4, 2006, meeting;
2. The State Water Board has considered input regarding the waiver of litigation rights section of the 2005-06 Consolidated Grants Program Guidelines from a broad spectrum of stakeholders and the public through the public comment process and at the January 4, 2006, meeting; and
3. The State Water Board has considered several options regarding appropriate language in this matter.

THEREFORE BE IT RESOLVED THAT:

The State Water Resources Control Board adopts the following waiver of litigation rights language, for inclusion in Section VI .F. of the 2005-06 Consolidated Grants Program Guidelines:

[Insert appropriate language at time of Board meeting.]

CERTIFICATION

The undersigned, Acting Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on February 1, 2006.

Selica Potter
Acting Clerk to the Board